

(Draft) MINUTES (Draft)

Citizen Review Board Meeting
Old City Hall, 510 Greene Street

Monday, November 10, 2008
6:00 p.m.

1. CALL THE MEETING TO ORDER:

Meeting was called to order by Chairman Green at 6:05 p.m.

2. ROLL CALL

BOARD MEMBERSHIP/AGENTS PRESENT:

Trice Denny
Bryan Green
Virginia Altobello
Mark Kielsgard
Michael Driscoll
Kevin Collins
Robert Cintron, Attorney for the Board
Stephen Muffler, Executive Director of the Board

ADDITIONAL ATTENDEES:

Lt. David Smith (KWPD)
Michael Rosenstein (by phone)
Nancy Loewy
William Flegia
Ted McDonald
David T. Smith

3. PLEDGE OF ALLEGIANCE:

4. APPROVAL OF MINUTES:

Chairman Green solicited any comments, amendments or modifications to the minutes for the meeting of 10/27/08. Ms. Altobello corrected the spelling of her first name as a "G" and not a "J" for Genny. Minutes approved as corrected.

Chairman Green requested the status of the prior minutes from June 2008-September 2008. Executive Director Muffler explained that the former Executive Director, Amanda Willett-Ramirez, was still working on them and they are delayed due to her new full time position in the City's legal department. Director Muffler pointed out that it would be very hard for him to "recreate" minutes for prior meetings as he was not present and the audio would be difficult to pick up clearly the identity of the motions and the specific language used. Thus he suggested that the Board give Mrs. Willett-Ramirez liberal time to complete this task.

5. CONTINUED OR NEW BUSINESS:

Nominations for Vice Chair Position were solicited by Chairman Green. Nominations were closed and the Nominees being Mr. Kielsgard and Mr. Collins. A closed ballot election occurred and attorney Cintron and Director Muffler counted the ballots and announced a tie of 3-3. Immediately thereafter, Mr. Kielsgard announced he would withdrawal his name from consideration making Mr. Collins the Vice Chair by default.

Chairman Green wished to proceed to the review of the Rosenstein file, but Mr. Rosenstein had not called into the meeting as of yet so attorney Cintron was solicited to make any comments/presentations to the Board. (Item #6 on the Agenda was then addressed—out of order)

Attorney Cintron refreshed the Board's recollection on the 180 rule found in the Florida Statutes (Officer's Bill of Rights) and also explained that the current and future Union Bargaining Agreement will also have time tables that needed to be satisfied in every investigation. Chairman Green also explained to the Board members who where not present why this was relevant. Attorney Cintron explained some type of "trigger" is needed so that CRB can address the files in time.

Chairman Green solicited from Director Muffler any proposals as to how to meet these deadlines. Director Muffler proposed using a "tacking chart" similar to the one distributed to the members at the current meeting to keep track of all pending complaints. The Board would then be in a better position to know when it should activate its own investigation. The Board agreed that the chart was useful and should be updated and presented at all future meetings. Lt. Smith explained that Brown and Harding (referencing the two files on the chart that have not been heard by the CRB) could "refile" their complaints at any time after their case is over and the general procedure for closing files in these cases.

Director Muffler explained that beyond "basic" investigations would probably have to be conducted by hired contractors and other legal investigators and the CRB budget was not funded for such investigators. Director Muffler and attorney Cintron suggested that they could do "basic" investigations (review of public records, courthouse filings, etc...) to save the Board and City expense. However, should extensive investigations be needed, professional investigators would have to be hired and retained.

At the close of the aforesaid discussion, Director Muffler suggested he call Mr. Rosenstein and remind him to call into the meeting now. Said call took place and Mr. Rosenstein then joined the meeting via telephone.

Review File: Michael Rosenstein – CRB# 08-005

The summary of the case was given by Chairman Green and agreed to by Mr. Rosenstein. Chairman Green requested clarification of why all of the allegations of falsification of evidence were not made at the time of the resolution of the original complaint in 2006 was resolved. Mr. Rosenstein explained he did not understand the process and was very ill and was not cognizant as to the proper steps to complain. Chairman Green requested

clarification of why Mr. Rosenstein signed a letter acknowledging the settlement of his original complaint that arose from the same facts and situation as this present complaint. Mr. Rosenstein explained he plead out this criminal case due to his medical condition and could not rationally understand what was going on at the time due to his medical conditions.

Mr. Kielsgard asked Mr. Rosenstein if he had any new evidence and Mr. Rosenstein said he did not. Mr. Rosenstein alleged that the arrest report was not truthful and not the same one that he viewed previously. Lt. Smith was asked if the audio visual materials were still available and Lt. Smith stated he did not have personal knowledge one way or another, but these materials may exist in the discovery packets.

Mr. Kielsgard stated that the entrapment issue should not be addressed by the Board as this was a legal defense. Mr. Kielsgard suggested that the discovery issue may or may not be investigated by the Board. Mr. Kielsgard felt the entrapment issue should not be addressed by the Board at this time.

Motion made by Mr. Kielsgard to find NOT SUSTAINED the charge of entrapment due to the fact it is beyond the Board's jurisdiction and a court issue; Seconded by Ms. Denny.

Vote: Passes Unanimously

The Board then addressed the second issue as to the falsification of records/information. Mr. Kielsgard and Chairman Green suggested that a basic investigation be conducted by the Board to request copies of the audio/visual items, if they exist, from the State Attorney's Office and the Public Defender's Office. Chairman Green suggested that a copy of I-Cop and Audio would help bring closure to this file. Mr. Kielsgard suggested that an investigation into the missing evidence (audio/visual) would be helpful and could be done by anyone, any member or attorney Cintron.

Motion made by Mr. Kielsgard to continue this case to the next meeting to try to get more formation (copies of audio/visual items) relative to Mr. Rosenstein's claim; Seconded by Vice Chair Collins.

Vote: Passes Unanimously

6. BOARD MEMBERS REPORT/GENERAL COMMENTS:

a. NACOLE attendees report/summary to the Board:

Vice Chair Collins reported on NACOLE conference and collected items which will be uploaded to the CRB site. Vice Chair Collins reported on various topics and thanked the Board for the opportunity to go to the conference. Mr. Kielsgard reported on matters at NACOLE and interfacing with Miami CRB members who expressed desire to forge closer relationship with the Key West CRB. He attended the various sessions that Vice Chair Collins could not attend. Mr. Kielsgard summarized his conversations with other CRB members in other states and cities. Mr. Kielsgard felt that the Board should look at the KWPD policies and procedures more closely in cases. Mr. Kielsgard reported that according

to the information provided by NACOLE, the KWPD averaged proportionately about the same number of complaints as other forces.

Attorney Cintron suggested that the Board write a letter to NACOLE to see if there was any way to buy the video tape of the conference proceedings.

7. EXECUTIVE DIRECTOR'S REPORT:

Director Muffler introduced the draft of the proposed "Working Agreement" with the KWPD and explained each provision to the Board. Director Muffler explained that the final modifications were being provided by the City Attorney's Office and have not been received. Board members were pleased with the proposal and wanted it finalized as soon as practical. Ms. Altobello stated she would provide some clerical modifications to Director Muffler directly after the meeting.

Executive Director secured the approval of the proposed new CRB informational brochure with minor changes as to alerting the complainant to contact the Executive Director as to issues dealing with timing of complaint filings.

Meeting dates for 2009 were confirmed and viewed on the CRB website and Director Muffler presented a short PowerPoint slide show on the standards of proof to be satisfied in CRB files.

8. NEW BUSINESS:

Mr. Kielsingard brought up the problem that the Key West police are not being paid enough due to the health insurance taking about 20% of their salary for family members. Mr. Kielsingard suggested that the Board make a statement announcing their support for more compensation in the way of pay or benefits for the Key West police. Board members inquired as to the typical officer's workday and extra side jobs and Lt. Smith clarified the work hours and extra jobs many officers had to work to make sufficient pay. When questioned if such an announcement is proper for this Board to make, attorney Cintron advised that it would be proper for the Board to make such a recommendation in a limited capacity. No formal motion was made on the matter and general recommendations to bring it up later at future meetings were made by several members.

Vice Chair Collins questioned Lt. Smith if the I-COP procedural manual/directives were finalized and if it can be given to Board. Lt. Smith would look into the matter. Chairman Green asked for the status of any IA complaints and Lt. Smith announced he would supply the "Kelly Thomas" closed file and provide Director Muffler with a copy of the 2008 case schedule of IA files.

9. PUBLIC INPUT:

Public attendees stated that the discussion was interesting.

10. MEDIA AND PRESS QUESTIONS:

Chairman Green asked Director Muffler if the media was informed of the Board's meetings. Director Muffler stated that an e-mail was sent out in October to the news media contacts informing them that all the agendas, minutes and board materials would now be online and viewable. It was presumed by Director Muffler that no personal invitation to the media would be necessary given the now increased public availability of the Board's documents online.

11. ADJOURNMENT:

Meeting was adjourned at 8:15 p.m.

Respectfully Submitted

Stephen C. Muffler, Esquire
Executive Director